

PARLIAMENTARY PRIVILEGE: TOWARDS A NEW PARADIGM FRAMEWORK

FREEDOM OF SPEECH

OVERVIEW

- **Kuhn's Paradigm Shift**
- **Bill of Rights (1689): Relationship to Crown and Courts**
- **Judicial Review: 'Necessity'**
- **Reassessment of Privilege / Rights-based Law**
- **New paradigm framework**

PARADIGM SHIFT: KUHN

- **Shift from accepted conceptual model to another.**
- **Modernization of privilege.**
- **Approach:**
 - **Original basis vs. contemporary environment.**
 - **Consistent with modern values.**

BILL OF RIGHTS (1689): RELATIONSHIP TO CROWN AND PARLIAMENT

- **Bill of Rights (1689) confirms paradigm framework.**
- **Crown and Parliament become equals.**
- **Parliament's sovereignty.**
- **Confers 'status' on Parliament and Members.**
- **Ministry in Parliament. Responsible Government.**

JUDICIAL REVIEW: 'NECESSITY'

Pivot Point No. 1:

- **Growth of democracy. Expanding franchise.**
- **Gives citizens greater stake in public affairs.**
- **Rising expectations of accountability.**
- **Role for the Courts...develop test of 'necessity'.**
- **Is claim 'necessary'? : impact on scope.**

REASSESSMENT OF PRIVILEGE / RIGHTS-BASED

Pivot Point No. 2:

- **Rights-based approach to law.**
- **Damage to citizens (e.g. defamation).**
- **Courts: sceptical of unnecessary claims.**
- **‘Necessity’ used to challenge claims.**
- **A dynamic tool of assessment.**

NEW PARADIGM FRAMEWORK

- **Privilege reassessed to fit today's world.**
- **Reduce risk of damage to citizens.**
- **Limitations on free speech.**
- **Parliament should take the initiative.**
- **Change agent: opportunities for Clerks / Secretaries General.**